

SAVE OUR CUMBERLAND MOUNTAINS, INC.

IBLA 89-410

Decided October 11, 1989

Petition under section 525(e) of the Surface Mining Control and Reclamation Act of 1977 for award of costs and expenses, including attorneys' fees, incurred in connection with proceedings in Save Our Cumberland Mountains, Inc., 108 IBLA 70, 96 I.D. 139 (1989).

Petition approved.

1. Surface Mining Control and Reclamation Act of 1977: Attorneys' Fees/Costs and Expenses: Standards for Award--Surface Mining Control and Reclamation Act of 1977: Attorneys' Fees/Costs and Expenses: Substantial Contribution

Where an organization timely petitions for an award of costs and expenses including attorneys' fees under sec. 525(e) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1275(e) (1982), and 43 CFR 4.1290 through 4.1296, and the Office of Surface Mining Reclamation and Enforcement files a response stating that it has no objection to the petition, the Board will approve the petition if it meets the requirements set forth in the regulations. Under 43 CFR 4.1294(b), a person who initiates or participates in a proceeding under Surface Mining Control and Reclamation Act may be eligible for an award of attorneys' fees from the Office of Surface Mining Reclamation and Enforcement if he prevails in whole or in part, achieving at least some degree of success on the merits. To be entitled to an award, the regulation requires that the record show that the person made a substantial contribution to a full and fair determination of the issues. Where the person has prevailed on all issues decided in the appeal and the Board has granted his request for specific relief, he has made such a contribution and is entitled to costs and expenses, including attorneys' fees.

APPEARANCES: Thomas J. FitzGerald, Esq., Frankfort, Kentucky, for Save Our Cumberland Mountains, Inc.; Charles P. Gault, Esq., Office of the Field Solicitor, Knoxville, Tennessee, for the Office of Surface Mining Reclamation and Enforcement.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Save Our Cumberland Mountains, Inc. (SOCM), has filed a petition pursuant to section 525(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. § 1275(e) (1982), and 43 CFR 4.1290 through 4.1296, for the award of costs and expenses, including attorneys' fees, incurred in connection with proceedings before this Board in Save Our Cumberland Mountains, Inc., 108 IBLA 70, 96 I.D. 139 (1989). In that decision, we reversed a decision by the Director, Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement (OSMRE), which disposed of SOCM's citizen complaint (request for inspection), and ordered the agency to take appropriate enforcement action.

In its petition to the Board, SOCM asserts that it has met the requirements for an award of costs and expenses set forth in section 525(e) of SMCRA, 30 U.S.C. § 1275(e) (1982), and 43 CFR 4.1294. SOCM contends that it is entitled to attorneys' fees in the amount of \$5,995, explaining that it arrived at this amount by using the standards for fee computation set out in Copeland v. Marshall, 641 F.2d 880, 891-92, 899-900 (D.C. Cir. 1980), and Virginia Citizens for Better Reclamation, 88 IBLA 126 (1985).

On September 22, 1989, OSMRE filed a response to SOCM's petition in which it stated that it does not oppose the petition. Nevertheless, we must examine the petition to determine if it satisfies the applicable regulatory requirements.

[1] The applicable regulations 43 CFR 4.1290 and 4.1294 provide in pertinent part as follows:

§ 4.1290 Who may file.

(a) Any person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of that person's participation in any administrative proceeding under the Act which results in--

* * * * *

(2) A final order being issued by the Board.

§ 4.1294 Who may receive an award.

Appropriate costs and expenses including attorneys' fees may be awarded--

* * * * *

(b) From OSM[RE] to any person, other than a permittee or his representative, who initiates or participates in any proceeding under the Act, and who prevails in whole or in part, achieving at least some degree of success on the merits, upon a finding that such person made a substantial contribution to a full and fair determination of the issues.

See Natural Resources Defense Council, Inc. v. OSMRE, 107 IBLA 339, 363-69, 96 I.D. 83, 96-99 (1989).

There is no question that SOCM made "a substantial contribution to a full and fair determination of the issues" in Save Our Cumberland Mountains, Inc., *supra*. As SOCM points out, it sought two determinations from the Board in that case: that the requirement to complete rough backfilling and grading attaches to an area of land at the time of coal removal from the land rather than at the time of final coal removal from a mining cut; and that an extension to the 180-day rough backfilling and grading requirement may be obtained only through submittal of a detailed written analysis under 30 CFR 780.18(b)(3) that additional time was necessary. We agreed with SOCM on both issues and reversed the agency decision not to take action. Also, SOCM sought an order directing appropriate enforcement action, which was directed by this Board. See Save Our Cumberland Mountains, Inc., *supra*.

Thus, SOCM has clearly shown that it achieved "some degree of success on the merits" by prevailing in its appeal seeking reversal of the decision of the Director of OSMRE's Knoxville Field Office.

In determining the amount of an award of attorneys' fees under section 525(e) of SMCRA, the Board uses the "lodestar" formula, *i.e.*, the number of hours reasonably expended on qualifying work multiplied by the reasonable hourly rate. ^{1/} There is a strong presumption that the lode-star represents the reasonable fee to which counsel is entitled. Natural Resources Defense Council, Inc. v. OSMRE, *supra* at 373, and cases cited. In its petition, SOCM sets forth information which justifies the hours expended and the hourly rate requested. Using the lodestar formula, SOCM then multiplied the hours expended (54.5) by the hourly rate (\$110) to arrive at the lodestar of \$5,995.

We find no reason to doubt the accuracy of SOCM's application for attorneys' fees, particularly in light of OSMRE's decision not to oppose the petition. Having determined that SOCM's petition meets the requirements for award of costs and expenses, including attorneys' fees, set forth in the regulations, we hereby approve SOCM's petition in the amount of \$5,995.

^{1/} SOCM notes that, in certain cases, upward adjustments may be made to the lodestar, citing Blum v. Stenson, 465 U.S. 886, 897 (1984), but does not seek an upward adjustment here.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition of SOCM is approved.

David L. Hughes
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge